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UNITED STATES DISTRICT COURT

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NORTHERN DISTRICT OF CALIFORNIA – SAN FRANCISCO

10 EMMETT COLLINS, III,) Case No.: C08-02522 EDL
 11 Plaintiff,)
 12 vs.) **DEFENDANTS COUNTY OF
 13 COUNTY OF ALAMEDA; ALAMEDA) ALAMEDA'S, R. PECK'S, AND
 14 COUNTY SHERIFF'S DEPUTY R. PECK;) S. SORENSEN'S ANSWER TO
 14 ALAMEDA COUNTY SHERIFF'S DEPUTY) COMPLAINT FOR DAMAGES [CIVIL
 15 S. SORENSEN; DOES 1-25, Inclusive,) RIGHTS]; AND DEMAND FOR JURY
 16 Defendants.) TRIAL**
 16 _____)

17 Defendants, COUNTY OF ALAMEDA, a governmental entity; RYAN PECK,
 18 individually and in his capacity as a deputy sheriff for the COUNTY OF ALAMEDA; and
 19 SCOTT SORENSEN, individually and in his capacity as a deputy sheriff for the COUNTY OF
 20 ALAMEDA, answer the correspondingly numbered paragraphs of Plaintiff's Complaint, and
 21 assert their defenses as follows:

JURISDICTION

23 1. Defendants admit that this court has jurisdiction over the controversy alleged, but
 24 otherwise, defendants deny generally and specifically each and every other allegation of this
 25 paragraph.

PARTIES

27 2. Defendants are without sufficient knowledge to admit or deny the allegations of this
 28 paragraph, and on that basis, deny them generally and specifically.

1 3. Defendants admit the COUNTY OF ALAMEDA is a governmental entity, duly
 2 organized and existing under the laws of the State of California, and that the Alameda County
 3 Sheriff is an elected official. Defendants deny generally and specifically each and every other
 4 allegation of this paragraph.

5 4. Defendants admit that Defendant Peck and Defendant Sorensen were Alameda
 6 County Deputy Sheriffs on or about December 14, 2006, and that the officers were acting in the
 7 course of their duties during the relevant timeframe. Defendants deny generally and specifically
 8 each and every other allegation of this paragraph.

9 5. Defendants are without sufficient knowledge to admit or deny the allegations of this
 10 paragraph, and on that basis, deny them generally and specifically.

11 6. Defendants are without sufficient knowledge to admit or deny the allegations of this
 12 paragraph, and on that basis, deny them generally and specifically.

STATEMENT OF FACTS

13 7. Defendants admit that Alameda County Deputy Sheriff Peck approached a car
 14 occupied by plaintiff. Defendants admit Deputy Peck requested plaintiff's identification.
 15 Defendants admit force was used in response to plaintiff's conduct. Defendants admit that
 16 Alameda County Deputy Sheriff Sorensen arrived on scene at some point prior to or during
 17 plaintiff's arrest. Defendants admit than an ambulance was summoned to attend to plaintiff, and
 18 that plaintiff was transported to Eden Medical Center for further treatment. Defendants deny
 19 generally and specifically each and every other allegation of this paragraph.

CLAIMS REQUIREMENT

21 8. Defendants are without sufficient knowledge to admit or deny the allegations of this
 22 paragraph, and on that basis, deny them generally and specifically.

DAMAGES

23 9. Defendants admit plaintiff was held in custody at Santa Rita Jail, otherwise
 24 defendants deny generally and specifically each and every allegation of this paragraph.

25 10. Defendants deny generally and specifically each and every allegation of this
 26 paragraph.

11. Defendants deny generally and specifically each and every allegation of this paragraph.

First Cause of Action (42 U.S.C. §1983)

(Against Defendants PECK and SORENSEN, and DOES 1 through 25, inclusive)

5 12. Defendants incorporate by reference paragraphs 1 through 11 of this answer.

6 13. Defendants admit that Alameda County Deputy Sheriffs Peck and Sorensen were
7 acting in the course of their duties. Defendants deny generally and specifically each and every
8 other allegation of this paragraph. Defendants also deny generally and specifically each and
9 every allegation of sub-paragraphs a, b, c and d, to the extent plaintiff claims defendants
10 infringed any of these constitutional protections.

11 14. Defendants deny generally and specifically each and every allegation of this
12 paragraph.

**Second Cause of Action
(42 U.S.C. §1983)
(Against Defendant COUNTY)**

15. Defendants incorporate by reference paragraphs 1 through 14 of this answer.

16 16. Defendants deny generally and specifically each and every allegation of this
17 paragraph.

18 17. Defendants deny generally and specifically each and every allegation of this
19 paragraph.

DEMAND FOR JURY TRIAL

Defendants demand a trial by jury on all issues appropriate for jury resolution.

PRAAYER

23 Defendants deny plaintiff's claims for injuries and damages, deny plaintiff's prayer for
24 relief in its entirety, and each item of alleged damages or relief.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

Defendants allege that neither plaintiff's complaint nor any of the alleged claims for relief or "causes of action" therein state facts sufficient to constitute a claim for relief against

1 defendants.

2 **SECOND AFFIRMATIVE DEFENSE**

3 Defendants allege that their conduct was privileged and/or justified.

4 **THIRD AFFIRMATIVE DEFENSE**

5 Defendants allege that all actions undertaken by them regarding and relating to plaintiff
6 were in good faith and with reasonable belief that said actions were valid, necessary, and
7 constitutionally and statutorily proper.

8 **FOURTH AFFIRMATIVE DEFENSE**

9 Defendants allege that they are entitled to statutory and/or common law immunity,
10 including qualified immunity, and as such are not liable for damages as alleged in plaintiff's
11 complaint.

12 **FIFTH AFFIRMATIVE DEFENSE**

13 Defendants allege that plaintiff's claims for relief are barred by the applicable statute of
14 limitations.

15 **SIXTH AFFIRMATIVE DEFENSE**

16 Defendants allege that plaintiff had a duty to use reasonable efforts to mitigate his
17 alleged damages and plaintiff failed to use reasonable efforts to mitigate those alleged damages.

18 **SEVENTH AFFIRMATIVE DEFENSE**

19 Defendants allege that plaintiff expressly or impliedly consented to the matters of which
20 he now complains.

21 **EIGHTH AFFIRMATIVE DEFENSE**

22 Defendants allege that the claims set out in plaintiff's complaint, and each cause of
23 action therein, are barred due to plaintiff's failure to comply with applicable claims presentation
24 requirements set forth in the California Government Tort Claims Act.

25 **NINTH AFFIRMATIVE DEFENSE**

26 Defendants allege that plaintiff's complaint does not state facts sufficient to constitute a
27 cause of action and that it is barred by plaintiff's failure to comply with applicable notice and
28 claim provisions of California Government Code Sections 905, 910, 910.2, 911.2 et seq.,

1 and 945.6.

2 **TENTH AFFIRMATIVE DEFENSE**

3 Plaintiff's complaint and each and every cause of action contained therein is limited
4 and/or barred by the terms of California Government Code Sections 815, 815.2(b), 818, 820.2,
5 820.4, and California Penal Code Sections 834a, 835a, and 836.

6 **ELEVENTH AFFIRMATIVE DEFENSE**

7 Defendants' actions and conduct were based on reasonable suspicion and/or probable
8 cause under the U.S. Constitution, therefore plaintiff's claims are barred.

9 WHEREFORE, Defendants pray as follows:

- 10 1. That plaintiff take nothing from Defendants by his Complaint;
11 2. That Defendants be awarded judgment in this action;
12 3. That Defendants be awarded costs of suit incurred herein; and
13 4. That Defendants be awarded such other relief as this Court deems proper.

14 Dated: June 12, 2008

15 HAAPALA, THOMPSON & ABERN, LLP

16
17 By: /s/ Benjamin A. Thompson
18 Benjamin A. Thompson
19 Attorneys For Defendants
20 COUNTY OF ALAMEDA, RYAN PECK
and SCOTT SORENSEN